THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION Nos.9154 of 2004 TO 9166 of 2004,

9220 of 2004 to 9222 of 2004, 10143 of 2004 & 10144 of 2004

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%Dated 06.12.2004

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Chanakya Cements Limited & others

... APPELLANTS

VERSUS

$Transmission Corporation of A.P., Vidyut Soudha, Khairatabad
Hyderabad, rep. by Chairman & Managing Director & others.

...RESPONDENTS

@ Counsel for Appellants: MR. C.V.Nagarjuna Reddy.

^ Counsel for Respondents: Smt. M. Vinobha Devi

< **GIST:**

> HEAD NOTE:

? Cases referred- Nil.

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION Nos.9154 of 2004 TO 9166 of 2004,

9220 of 2004 to 9222 of 2004, 10143 of 2004 & 10144 of 2004

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1)WRIT PETITION NO : 9154 of 2004

Between:

Chaanakya Cements Limited, Plot No. 652, Road No. 3, Banjarahills,
Hyderabad- 500 034 repby Chairman & Managing Director, P. Prathap Reddy

..... PETITIONER

AND

1 Transmission Corporation of A.P. Ltd., Vidyut Soudha, Khairatabad,
Hyderabad, rep. by Chairman & Managing Director.
2 Central Power Distribution Company of A.P. Ltd., Singareni Bhavan,
Red Hills, Hyderabad, rep by Chairman & Managing Director
3 Andhra Pradesh Gas Power Corporation Ltd., #201, 2nd Floor My Home
Sarovar Plaza, Secretariat Road, Hyderabad-500 63,
rep. by Managing Director

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of mandamus or any other appropriate Writ order or direction declaring that respondents 1 and 2 have no authority to levy and demand any tariff in respect of the power allocated by 3rd respondent in excess of the bills raised by the 3rd respondent and consequently direct respondent 1 and 2 to forbear from raising such bill.

Counsel for the Petitioner: MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents 1 & 2 : SMT.M.VINOBHA DEVI, Standing counsel

for A.P.Transco.

Counsel for the Respondent No.3: Mr. C.Sudesh Anand

2) WRIT PETITION NO : 9155 of 2004

Between:

Hindustan Zinc Ltd., P.O. Zinc Smelter, Visakhapatnam-530015,
rep. by C.Kesava Rao, Sr. Manager (Elec.) and Power of Attorney
holder of Shri Kuldip Kumar Kaura, Managing Director.
… Petitioner

AND

1 Transmission Corporation of A.P. Ltd., Vidyut Soudha, Khairatabad,
Hyderabad, rep. by its Chairman & Managing Director.
2 Eastern Power Distribution Company of A.P. Ltd., 30-14-9,
Sai Salthi Bhavan, Opp: Saraswati Park Daba Gardens,
Visakhapatnam, rep. by its Chairman & Managing Director.
3 Andhra Pradesh Gas Power Corporation Ltd., #201, 2nd floor,
My Home Sarovar Plaza, Secretariat Road, Hyderabad. … Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of mandamus or any other appropriate writ order or direction declaring that respondents 1 and 2 have no authority to levy and demand any tariff in respect of the power allocated by 3rd respondent in excess of the bills raised by the 3rd respondent and consequently direct respondents 1 and 2 to forbear from raising such bills.

Counsel for the Petitioner: MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents 1 & 2 : SMT.M.VINOBHA DEVI, Standing counsel for A.P.Transco.

Counsel for the Respondent No.3: Mr. C.Sudesh Anand

3)WRIT PETITION NO : 9156 of 2004

Between:

The Andhra Sugars Ltd., P.B. No.2 Venkatarayapuram, Tanuku 534215
rep. by Chairman & Managing Director, Dr. Mullapudi Harischandra Prasad
…Petitioner

AND

1 Transmission Corporation of A.P. Ltd., Vidyut Soudha, Khairatabad,
Hyderabad, rep. by Chairman & Managing Director
2 Eastern Power Distribution Company of A.P. Ltd, 30-14-9, Sai Salthi Bhavan,
Opp Saraswati Park Daba Gardens, Visakhapatnam-530 020
rep. by its Chairman & Managing Director.

3 Southern Power Distribution Company of A.P. Ltd., 19-3-13, Upstairs of
Hero Honda Show Room, Renigunta Road, Tirupati-517 501,
rep. by Chairman & Managing Director
4 Andhra Pradesh Gas Power Corporation Ltd., #201, 2nd Floor,
My Home Sarovar Plaza, Secretariat Road, Hyderabad-500 063,
rep. by Managing Director … Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ order or direction declaring that respondents 1 to 3 have no authority to levy and demand any tariff in respect of the power allocated by 4th respondent in excess of the bills raised by the 4th respondent and consequently direct the respondents 1 to 3 to forbear from raising such bills.

Counsel for the Petitioner: MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents 1 to 3:Smt.VINOBHA DEVI, Standing counsel for A.P.Transco.

Counsel for the Respondent No.4: Mr. C.Sudesh Anand

4)WRIT PETITION NO : 9157 of 2004

Between:

VST Industries Limited P.B.No.1804, Azamabad, Hyderabad-500020
rep. by its Constituted Attorney Sanjay Khanna, Corporate General Counsel

..... PETITIONER

AND

1 Transmission Corporation of A.P. Ltd., Vidyut Soudha, Khairatabad,
Hyderabad, rep. by its Chariman & Managing Director
2 Central Power Distribution Company of A.P. Ltd., Singareni Bhavan ,
Red Hills, Hyderabad, rep. by its Chairman & Managing Director
3 Andhra Pradesh Gas Power Corporation Ltd., # 201, 2nd Floor,
My Home Sarovar Plaza, Secretariat Road, Hyderabad-500063,
rep. by its Managing Director

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ order or direction declaring that respondents 1 and 2 have no authority to levy and demand any tariff in respect of the power allocated by 3rd respondent in excess of the bills raised by the 3rd respondent and consequently direct respondents 1 and 2 to forbear from raising such bills.

Counsel for the Petitioner: MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents 1 & 2 : SMT.M.VINOBHA DEVI, Standing counsel

for A.P.Transco.

Counsel for the Respondent No.3: Mr. C.Sudesh Anand

5)WRIT PETITION NO : 9158 of 2004

Between:

M/s. Hindustan Sanitariware and Industries Ltd.,

(AGI glaspac), rep. by its President Mr. D.Arun Kumar,

Sanathnagar P.O., P.B.No.1930, Hyderabad-500 018. … Petitioner

AND

1 Transmission Corporation of A.P. Ltd., Vidyut Soudha, Khairatabad, Hyderabad, rep. by its Chariman & Managing Director
2 Central Power Distribution Company of A.P. Ltd., Singareni Bhavan , Red Hills, Hyderabad, rep. by its Chairman & Managing Director
3 Andhra Pradesh Gas Power Corporation Ltd., # 201, 2nd Floor, My Home Sarovar Plaza, Secretariat Road, Hyderabad-500063, rep. by its Managing Director

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ order or direction declaring that respondents 1 and 2 have no authority to levy and demand any tariff in respect of the power allocated by 3rd respondent in excess of the bills raised by the 3rd respondent and consequently direct respondents 1 and 2 to forbear from raising such bills.

Counsel for the Petitioner: MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents 1 & 2: SMT.M.VINOBHA DEVI, Standing counsel for A.P.Transco.

Counsel for the Respondent No.3: Mr. C.Sudesh Anand

6)WRIT PETITION NO : 9159 of 2004

Between:

Sheetal Shipping and Metal Processors Limited,

5-5-103 to 105/6, 1st floor, Meher Complex, Ranigunj,

Secunderabad-500 003, rep. by its Managing Director

Radhakrishna Agarwal … Petitioner

AND

1 Transmission Corporation of A.P. Ltd., Vidyut Soudha, Khairatabad, Hyderabad, rep. by its Chariman & Managing Director

2 Central Power Distribution Company of A.P. Ltd., Singareni Bhavan , Red Hills, Hyderabad, rep. by its Chairman & Managing Director
3 Andhra Pradesh Gas Power Corporation Ltd., # 201, 2nd Floor, My Home Sarovar Plaza, Secretariat Road, Hyderabad-500063, rep. by its Managing Director

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ order or direction declaring that respondents 1 and 2 have no authority to levy and demand any tariff in respect of the power allocated by 3rd respondent in excess of the bills raised by the 3rd respondent and consequently direct respondents 1 and 2 to forbear from raising such bills.

Counsel for the Petitioner: MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents 1 & 2: SMT.M.VINOBHA DEVI, Standing counsel for A.P.Transco.

Counsel for the Respondent No.3: Mr. C.Sudesh Anand

7) WRIT PETITION NO : 9160 of 2004

Between:

My Home Cement Industries Ltd., 4th Floor, My Home Jupally, Greenlands, Ameerpet Road, Hyderabad-500 016, A.P., rep. by its Director (Technical) Sahri V.S. Narang.

..... PETITIONER

AND

1 Transmission Corporation of A.P. Ltd., Vidyut Soudha, Khairatabad, Hyderabad, rep. by its Chariman & Managing Director
2 Central Power Distribution Company of A.P. Ltd., Singareni Bhavan , Red Hills, Hyderabad, rep. by its Chairman & Managing Director
3 Andhra Pradesh Gas Power Corporation Ltd., # 201, 2nd Floor, My Home Sarovar Plaza, Secretariat Road, Hyderabad-500063, rep. by its Managing Director

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ order or direction declaring

that respondents 1 and 2 have no authority to levy and demand any tariff in respect of the power allocated by 3rd respondent in excess of the bills raised by the 3rd respondent and consequently direct respondents 1 and 2 to forbear from raising such bills.

Counsel for the Petitioner: MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents 1 & 2 : SMT.M.VINOBHA DEVI, Standing counsel for A.P.Transco.

Counsel for the Respondent No.3: Mr. C.Sudesh Anand

8) WRIT PETITION NO : 9161 of 2004

Between:

Visaka Cement Industry Limited, having its registered
office at 827, Dhun building, Anna Salai, Chennai-600 002,

rep. by its Assistant General Manager Mr. I.Gopinath … Petitioner

AND

1 Transmission Corporation of A.P. Ltd., Vidyut Soudha, Khairatabad, Hyderabad, rep. by its Chariman & Managing Director
2 Central Power Distribution Company of A.P. Ltd., Singareni Bhavan , Red Hills, Hyderabad, rep. by its Chairman & Managing Director
3 Andhra Pradesh Gas Power Corporation Ltd., # 201, 2nd Floor, My Home Sarovar Plaza, Secretariat Road, Hyderabad-500063, rep. by its Managing Director

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ order or direction declaring that respondents 1 and 2 have no authority to levy and demand any tariff in respect of the power allocated by 3rd respondent in excess of the bills raised by the 3rd respondent and consequently direct respondents 1 and 2 to forbear from raising such bills.

Counsel for the Petitioner: MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents 1 & 2: SMT.M.VINOBHA DEVI, Standing counsel for A.P.Transco.

Counsel for the Respondent No.3: Mr. C.Sudesh Anand

9) WRIT PETITION NO : 9162 of 2004

Between:

M/s. NCL Industries Limited, 7th floor, Raghava
Ratna Towers, Chirag Ali Lane, Abids, Hyderabad-500 001,

rep. by its Managing Director K.Ravi. … Petitioner

AND

1 Transmission Corporation of A.P. Ltd., Vidyut Soudha, Khairatabad, Hyderabad, rep. by its Chariman & Managing Director
2 Central Power Distribution Company of A.P. Ltd., Singareni Bhavan , Red Hills, Hyderabad, rep. by its Chairman & Managing Director
3 Andhra Pradesh Gas Power Corporation Ltd., # 201, 2nd Floor, My Home Sarovar Plaza, Secretariat Road, Hyderabad-500063, rep. by its Managing Director

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ order or direction declaring that respondents 1 and 2 have no authority to levy and demand any tariff in respect of the power allocated by 3rd respondent in excess of the bills raised by the 3rd respondent and consequently direct respondents 1 and 2 to forbear from raising such bills.

Counsel for the Petitioner: MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents 1 & 2: SMT.M.VINOBHA DEVI, Standing counsel for A.P.Transco.

Counsel for the Respondent No.3: Mr. C.Sudesh Anand

10) WRIT PETITION NO : 9163 of 2004

Between:

M/s. Amararaja Batteries Limited, Cuddapah Road, Karakam Badi, Renugunta- 517 520, rep. by its

Executive Chairman Mr.Ramachandra N.Galla.

..... PETITIONER

AND

1 Transmission Corporation of A.P. Ltd., Vidyut Soudha, Khairatabad, Hyderabad, rep. by its Chariman & Managing Director
2 Central Power Distribution Company of A.P. Ltd., Singareni Bhavan , Red Hills, Hyderabad, rep. by its Chairman & Managing Director
3 Andhra Pradesh Gas Power Corporation Ltd., # 201, 2nd Floor, My Home Sarovar Plaza, Secretariat Road, Hyderabad-500063, rep. by its Managing Director

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ order or direction declaring that respondents 1 and 2 have no authority to levy and demand any tariff in respect

of the power allocated by 3rd respondent in excess of the bills raised by the 3rd respondent and consequently direct respondents 1 and 2 to forbear from raising such bills.

Counsel for the Petitioner: MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents 1 & 2: SMT.M.VINOBHA DEVI, Standing counsel for A.P.Transco.

Counsel for the Respondent No.3: Mr. C.Sudesh Anand

11) WRIT PETITION NO : 9164 of 2004

Between:

Vinayaka Steels Limited, 5-4-83 to 85, 1st floor,

T.S.K.Chambers, R.No.4 & 4A, M.G.Road,

Secunderabad-500 003, rep. by its Managing Director

Vinod Kumar Kedia. ,,, Petitioner

AND

1 Transmission Corporation of A.P. Ltd., Vidyut Soudha, Khairatabad, Hyderabad, rep. by its Chariman & Managing Director
2 Central Power Distribution Company of A.P. Ltd., Singareni Bhavan , Red Hills, Hyderabad, rep. by its Chairman & Managing Director
3 Andhra Pradesh Gas Power Corporation Ltd., # 201, 2nd Floor, My Home Sarovar Plaza, Secretariat Road, Hyderabad-500063, rep. by its Managing Director

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ order or direction declaring that respondents 1 and 2 have no authority to levy and demand any tariff in respect of the power allocated by 3rd respondent in excess of the bills raised by the 3rd respondent and consequently direct respondents 1 and 2 to forbear from raising such bills.

Counsel for the Petitioner: MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents 1 & 2: SMT.M.VINOBHA DEVI, Standing counsel for A.P.Transco.

12) WRIT PETITION NO : 9165 of 2004

Between:

The India Cements Limited, having its registered office at 827, Dhun Building, Anna Salai, Chennai-600 002,

Rep. by its Assistant General Manager I.Gopinath ,,, Petitioner

AND

1 Transmission Corporation of A.P. Ltd., Vidyut Soudha, Khairatabad, Hyderabad, rep. by its Chariman & Managing Director
2 Central Power Distribution Company of A.P. Ltd., Singareni Bhavan , Red Hills, Hyderabad, rep. by its Chairman & Managing Director

3 Southern Power Distribution Company of A.P. Ltd., 19-3-13 (M), Upstairs, Renigunta Road, Tirupati, rep. by its Chairman & Managing Director

4 Andhra Pradesh Gas Power Corporation Ltd., # 201, 2nd Floor, My Home Sarovar Plaza, Secretariat Road, Hyderabad-500063, rep. by its Managing Director

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ order or direction declaring that respondents 1, 2 and 3 have no authority to levy and demand any tariff in respect of the power allocated by 4th respondent in excess of the bills raised by the 4th respondent and consequently direct respondents 1 and 2 to forbear from raising such bills.

Counsel for the Petitioner: MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents : SMT.M.VINOBHA DEVI, Standing counsel for A.P.Transco.

13) WRIT PETITION NO : 9166 of 2004

Between:

Sri Dhanalakshmi Cotton & Rice Mills Pvt. Ltd.,

Regd. Office Ganapavaram – 522 619 (Via.)

Chilakaluripeta, Guntur district, A.P.,

rep. by its Managing Director N.Raghava Rao ,,, Petitioner

AND

1 Transmission Corporation of A.P. Ltd., Vidyut Soudha, Khairatabad, Hyderabad, rep. by its Chariman & Managing Director
2 Southern Power Distribution Company of A.P. Ltd., 19-3-13 (M), Upstairs, Renigunta Road, Tirupati, rep. by its Chairman & Managing Director
3 Andhra Pradesh Gas Power Corporation Ltd., # 201, 2nd Floor,

My Home Sarovar Plaza, Secretariat Road, Hyderabad-500063,
rep. by its Managing Director … Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ order or direction declaring that respondents 1 and 2 have no authority to levy and demand any tariff in respect of the power allocated by 3rd respondent in excess of the bills raised by the 3rd respondent and consequently direct respondents 1 and 2 to forbear from raising such bills.

Counsel for the Petitioner: MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents : SMT.M.VINOBHA DEVI, Standing counsel for A.P.Transco.

14)WRIT PETITION NO : 9220 of 2004

Between:

Sree Rayalaseema Alkalies and Allied Chemicals Ltd., Vasanthanagar,
Kurnool - 518 004, rep by its Chairman and Managing Director
T.G. Venkatesh

..... PETITIONER

AND

1 Transmission Corporation of A.P. Ltd., Vidyut Soudha, Khairatabad,
Hyderabad, rep. by its Chariman & Managing Director
2 Central Power Distribution Company of A.P. Ltd., Singareni Bhavan ,
Red Hills, Hyderabad, rep. by its Chairman & Managing Director
3 Andhra Pradesh Gas Power Corporation Ltd., # 201, 2nd Floor,
My Home Sarovar Plaza, Secretariat Road, Hyderabad-500063,
rep. by its Managing Director … Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ order or direction declaring that respondents 1 and 2 have no authority to levy and demand any tariff in respect of the power allocated by 3rd respondent in excess of the bills raised by the 3rd respondent and consequently direct respondents 1 and 2 to forbear from raising such bills.

Counsel for the Petitioner: MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents: SMT.M.VINOBHA DEVI, Standing counsel for A.P.Transco.

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15)WRIT PETITION NO : 9221 of 2004

Between:

Bharat Heavy Electricals Limited, Ramachandrapuram,

Hyderabad 502032, rep. by its Executive Director

B.Ramachandra Rao … Petitioner

AND

1 Transmission Corporation of A.P. Ltd., Vidyut Soudha, Khairatabad, Hyderabad, rep. by its Chariman & Managing Director
2 Central Power Distribution Company of A.P. Ltd., Singareni Bhavan , Red Hills, Hyderabad, rep. by its Chairman & Managing Director
3 Andhra Pradesh Gas Power Corporation Ltd., # 201, 2nd Floor, My Home Sarovar Plaza, Secretariat Road, Hyderabad-500063, rep. by its Managing Director … Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ order or direction declaring that respondents 1 and 2 have no authority to levy and demand any tariff in respect of the power allocated by 3rd respondent in excess of the bills raised by the 3rd respondent and consequently direct respondents 1 and 2 to forbear from raising such bills.

Counsel for the Petitioner: MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents: SMT.M.VINOBHA DEVI, Standing counsel for A.P.Transco.

16) WRIT PETITION NO : 9222 of 2004

Between:

Grindwell Norton Limited, Karakambadi Cuddapah road,

Renugunta-517 520, A.P., rep. by its Deputy General

Manager, Industrial Relations and Legal P.C.P.Haran … Petitioner

AND

1 Transmission Corporation of A.P. Ltd., Vidyut Soudha, Khairatabad, Hyderabad, rep. by its Chariman & Managing Director

2 Southern Power Distribution Company of A.P. Ltd., 19-3-13 (M), Upstairs, Renigunta Road, Tirupati, rep. by its Chairman & Managing Director

3 Andhra Pradesh Gas Power Corporation Ltd., # 201, 2nd Floor, My Home Sarovar Plaza, Secretariat Road, Hyderabad-500063, rep. by its Managing Director … Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ order or direction declaring that respondents 1 and 2 have no authority to levy and demand any tariff in respect of the power allocated by 3rd respondent in excess of the bills raised by the 3rd respondent and consequently direct respondents 1 and 2 to forbear from raising such bills.

Counsel for the Petitioner: MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents : SMT.M.VINOBHA DEVI, Standing counsel for A.P.Transco.

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17)WRIT PETITION NO : 10143 of 2004

Between:

Sri Shiva Spinning Mills Pvt. Ltd.,

21-2-631, Urdugalli, Pathergatti, Hyderabad-500 002,

rep. by its Managing Director Kantilal Agarwal … Petitioner

AND

1 Transmission Corporation of A.P. Ltd., Vidyut Soudha, Khairatabad, Hyderabad, rep. by its Chariman & Managing Director
2 Central Power Distribution Company of A.P. Ltd., Singareni Bhavan , Red Hills, Hyderabad, rep. by its Chairman & Managing Director
3 Andhra Pradesh Gas Power Corporation Ltd., # 201, 2nd Floor, My Home Sarovar Plaza, Secretariat Road, Hyderabad-500063, rep. by its Managing Director … Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ order or direction declaring that respondents 1 and 2 have no authority to levy and demand any tariff in respect of the power allocated by 3rd respondent in excess of the bills raised by the 3rd

respondent and consequently direct respondents 1 and 2 to forbear from raising such bills.

Counsel for the Petitioner: MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents: SMT.M.VINOBHA DEVI , Standing counsel for A.P.Transco.

18)WRIT PETITION NO : 10144 of 2004

Between:

Shiv Shakti Steel Rolling Mills, 22-6-206, Pathergatti,

Hyderabad- 500 002, rep. by its Managing Partner

Mahavir Prasad …Petitioner
AND

1 Transmission Corporation of A.P. Ltd., Vidyut Soudha, Khairatabad, Hyderabad, rep. by its Chariman & Managing Director
2 Central Power Distribution Company of A.P. Ltd., Singareni Bhavan , Red Hills, Hyderabad, rep. by its Chairman & Managing Director
3 Andhra Pradesh Gas Power Corporation Ltd., # 201, 2nd Floor, My Home Sarovar Plaza, Secretariat Road, Hyderabad-500063, rep. by its Managing Director … Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ order or direction declaring that respondents 1 and 2 have no authority to levy and demand any tariff in respect of the power allocated by 3rd respondent in excess of the bills raised by the 3rd respondent and consequently direct respondents 1 and 2 to forbear from raising such bills.

Counsel for the Petitioner: MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents: SMT.M.VINOBHA DEVI, Standing counsel for A.P.Transco.

This Court made the following:
THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION Nos.9154 of 2004 TO 9166 of 2004,

9220 of 2004 to 9222 of 2004, 19143 of 2004 & 10144 of 2004

COMMON ORDER:

Since common question is involved in all these Writ Petitions, which have been heard together, they are being taken up together for disposal.

The petitioners in all these matters are the industries, who filed their respective Writ Petitions for a Writ of Mandamus, declaring the action of the respondents 1 and 2 in levying and demanding tariff in respect of power allocated by the third respondent in excess of the bills raised by it, as illegal, and consequently direct the respondents 1 and 2 to forbear from raising such bills.

The case of the petitioners, in brief, is that the entire impugned action on the part of the respondents 1 and 2 in issuing revised bill is purely on an erroneous interpretation of the judgment of the Supreme Court and therefore, the same is wholly unsustainable. It is their case that having regard to the various practical difficulties faced in regard to the power supply resulting in power cuts at various points of time leading to crippling of the industries and hampering the industrial development, the Andhra Pradesh State Electricity Board (APSEB) along with six other companies entered into Memorandum of Understanding (MoU) on 17.10.1988 constituting the third respondent for setting up a power generation station. Accordingly, the third respondent was incorporated on 31.10.1988. As per the terms contained therein, the power and energy as generated by the third respondent should be shared amongst the participating industries and also the APSEB in proportion to their paid-up capital on a pro-rata share of the actual energy generated. Under stage-I, the utilised energy of the participating industries shall be exclusively allocated to the APSEB and subsequently under stage-II, it was agreed by all the petitioners with other industries in public and private sector and the APSEB that the unutilised power generated shall be allocated

amongst the other participating industries requiring power other than APSEB. However, subsequent to the enforcement of the Andhra Pradesh Electricity Reform Act, 1998 (for short, 'the Act, 1998'), a question arose as to whether the third respondent is required to obtain licence. It is to be noticed that the third respondent being a collective and captive generating company, no licence was required under the provisions of the erstwhile Indian Electricity Act, 1910 (for short, 'the Act, 1910') or the Electricity (Supply) Act, 1948 (for short, 'the Act, 1948'). Therefore, it was contended that the same principle would apply to the Act, 1998. However, the Andhra Pradesh Electricity Regulatory Commission, which was constituted under the Act, 1998, observed that the generating company has to take a licence, whereupon appeal filed against such proceedings was rejected by this Court on 18.06.2001. However, on further appeal, the Supreme Court of India considering these aspects, gave a final judgment on 23.03.2004 holding ultimately that no such licence is required. However, interpreting the very same judgment in respect of certain observations made therein, now the second respondent at the behest of first respondent, sought to revise the bills, imposing revised tariff for the allotment of the power from the unutilised pool. Therefore, it was submitted that having regard to the very scope and object as intended and also in view of the specific terms and conditions as contained, the question of imposing any such tariff or revising the bills, does not arise, especially when the energy as generated by the third respondent is only meant for the participating industries and there is no supply of energy to the outsider. It was further contended that every shareholder with the third respondent is entitled to make use of the energy exclusively for its own purposes. Therefore, the respondents 1 and 2 could not have possibly varied the bill and basically without notice and without even raising any dispute before the appropriate forum as provided for. Thus, the entire unilateral action on the part of the respondents 1 and 2 is totally illegal. Further, it is also contended that none of the terms under the MoU, authorises any such levy to be made by the respondents 1 and 2 as against such allocation. Hence, the Writ Petitions.

In the common counter affidavit filed on behalf of the respondents, it is submitted that the objections as raised by the petitioners are wholly unsustainable and further even taking note of the terms and conditions of the MoU entered into between the parties and as observed by the Supreme Court, the petitioners can not make any claim in respect of the surplus and unutilised power. Further, as per clause 17 (a) thereof, such surplus power shall exclusively vests with the A.P. Transco, who has got first claim. Therefore, the respondents 1 and 2 are entitled to levy the tariff in respect of utilisation of such surplus power. It is also pointed out that power manufactured in terms of stages I and II is not distinguishable and no such levy is being made in respect of the quota to which each of the petitioners is entitled to vis-à-vis the contribution made and share held by it. As rightly observed by the Supreme Court in the judgment, the respondents are entitled to levy the tariff since the third respondent has no authority to supply any power beyond the entitlement of any shareholder i.e. the quantum fixed in proportion to its share in the equity capital. Even on a reading of the other clauses, the petitioners can not make any claim for entitlement nor they have any such right enforceable under law. Hence, the Writ Petitions are not maintainable.

The learned counsel appearing for the petitioners by taking through the provisions of the Act, 1910, and also the Act, 1998, submitted that having regard to the very object for supply of quota to the participating industries, which they require, even though out of surplus, the petitioners are entitled to be charged only with the same levy and not otherwise as now sought to be done on par with the third party consumers. In support, the learned counsel sought to place reliance on the judgment of the Supreme Court of India in the case between the parties and submits that the said judgment has not been

properly considered by the respondents 1 and 2 and there is complete misinterpretation thereof.

The learned standing counsel appearing on behalf of the respondents sought to sustain the impugned levy on the ground that the petitioners do not have any right in respect of the surplus power even as per the agreed terms and conditions under the MoU, and necessarily it is to be allotted at the discretion of the respondents 1 and 2 for which levy of such tariff has to be made and the same has been rightly made. Further, as observed in the decision of the Supreme Court, the entitlement is only in respect of prescribed quota vis-à-vis the amount of contribution made by each shareholder.

Considering the submissions made and also on perusal of the material, the question which falls for consideration is as to whether the petitioners have any right to claim for use of the quota from the surplus i.e. beyond the quota to which they are entitled to in proportion to their investment on par with the rates as applicable to the energy consumed within the allotted quota ?

There is no dispute to the fact that the petitioners are all participating industries and shareholders with the then APSEB, and the third respondent was constituted in terms of the MoU entered into between the parties in the year 1988. The whole object thereunder being to have a regular assured power supply to the industries by the then Board without any interruption or other problems as normally being faced. In the clauses contained in the MoU, quotas are fixed in proportion to the investment made by each of the participating industries and there is no dispute to the fact that each of the petitioners are being supplied well within the allotted quota and there is no complaint in this regard. A question arose subsequent to enforcement of the Act, 1998 as to whether any licence is required for the third respondent which has been constituted in terms of the

aforesaid MoU, to supply the energy. The Regulatory Commission has taken a view that such licence is required and on appeal at the instance of the petitioners, the said orders were upheld by this Court. However, on further appeal, the Supreme Court of India held that having regard to the fact that the energy generated is being consumed by the participating members alone, there is no requirement of any licence to supply under the old Act, 1910 or new Act, 1998. While considering this issue, not only provisions of the Act, 1998, but also the terms and conditions under the aforesaid MoU have been considered. On a reading of the said judgment and the surrounding circumstances leading to such dispute, there was no dispute nor any issue in regard to the entitlement of the participating industry from out of the surplus power i.e. beyond the quotas fixed in respect of each of the participating industries. No doubt, the clauses specifically say that it is the participating industries who are entitled to such energy as generated by the third respondent. Even in regard to such surplus energy found beyond the respective quotas, there is no specific clause under any of the terms and conditions as contained therein, as to the rights which are applicable in respect of any surplus which is found and which is being again redistributed among the participating industries on pro-rata basis. There is total silence on the surplus quota as to the mode of levy or rates or tariff.

The relevant clauses in the MoU which are applicable to the sole question arising in these matters, is clause 17(a) and (b), which read as follows:

> "17(a) It is agreed that if the power generation by APGPCL could
>
> > not be utilized by the Participating Industries either in full or in part, then A.P.Transco. shall have first claim to utilise such power. The price for such surplus energy shall be mutually settled between A.P. Transco. And APGPCL based on fuel cost plus O&M charges plus depreciation but not exceeding rate for energy as per HT category-I of A.P.Transco.
>
> (b)It is agreed that as a rule APGPCL shall not sell power outside

the state of Andhra Pradesh."

A bare reading of the aforesaid clauses makes it clear that for any reason the power as generated could not be utilised in full or part, A.P. Transco. shall have first claim to utilise such power and curiously, they further contemplate that for any such usage of surplus power, the price shall have to be actually settled between A.P. Transco. and APGPCL based on fuel cost plus O&M charges plus depreciation, but not as per HT category-I of A.P. Transco. Though the matter has been argued at length from both sides in regard to the applicability of the said clauses and entitlement from either side, no focus has been directed against the later portion of clause 17(a). There is total silence as to whether there was any such understanding or agreement or settlement or at least any parley between A.P. Transco and the third respondent in respect of determination of price of such surplus energy. Even otherwise, the said clause contemplates that such price has to be fixed by taking into consideration the fuel cost plus O&M charges plus depreciation, and the outer limit being that of the charges as fixed for H.T. category-I. Therefore, no such charge can go beyond the charges as applicable to the H.T. category-I. No material nor any particulars or bills have been furnished on behalf of either side in regard to any such charges or depreciation, etc. so as to arrive the actual price for such surplus energy. However, even by taking note the first portion of the clause, which makes it clear that there is no such exclusive right in favour of the petitioners viz. the participating industries, to claim from out of such surplus or unutilised power. It is only A.P. Transco which has got first claim to make utilisation thereof. If at all any right can be culled out from the said term, it only vests with A.P. Tansco. Therefore, it shall be at the sole and exclusive discretion of the A.P. Transco, to make use of such power in the manner which normally it does.

There is no dispute in these cases that the petitioners have been

allotted an additional quota from out of such surplus or unutilised power. Therefore, necessarily it contemplates that A.P. Transco is entitled to collect charges or tariff in the normal course rather than in terms of the rates as applicable to the quota to which each of the participating industries. Even on appreciating the very object under the MoU entered into between the parties, it can not be said that any participating industry would be entitled to claim extra quota beyond the quota which is in proportion to the investment made by each of them. In the absence of such investment or contribution linkage as such from any of these participating industries, they can not claim any right in respect of such surplus quota. In view of the same, it can not be accepted that the petitioners are entitled to make use of the additional quota of energy from surplus or unutilised power on the same rates as applicable to the rates for the quota as prescribed in the MoU. Necessarily, it follows that it is the A.P. Transco. who has exclusive discretion to make use of the same and allot the same among the participating industries.

No doubt, it can not be said that all such surplus quotas can be made use of by A.P. Transco. and supply the same to third parties other than participating industries. Necessarily, it contemplates that first preference has to be given to the participating industries and it is only in the event that none of the participating industries are willing to go for any such additional power supply, A.P. Transco. can allot the same in favour of third parties.

In the circumstances, it is to be held that the impugned action on the part of the respondents in levying of charges or tariff in respect of surplus energy allotted and supplied to the petitioners is valid. However, in the absence of any such price fixation agreement contemplated in the MoU and in view of clause 17(a) therein, it can not said that the price can be levied therefor at the choice of A.P. Transco. It is not the case of the third respondent that any such rates

have been fixed in consultation with A.P. Transco.

The Writ Petitions are partly allowed holding that the claim made by the respondents 1 and 2 in respect of surplus charges is valid. However, the same has to be necessarily at the rates or prices as to be determined between A.P. Transco and the third respondent after notice to the parties. Till such decision is arrived at, the respondents shall not give effect to the demands as made, and any demand made in respect of such surplus shall be subject to ultimate determination of the price in between A.P. Transco. and the third respondent. No costs.

(B.Prakash Rao, J.)

06.12.2004

DRK

L.R. COPY TO BE MARKED.

B.O.

DRK.

Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice,

On Monday the sixth day of December Two thousand and four.

… Registrar

/true copy/

Section Officer.

Copy to:

One fair copy to the Hon'ble Mr. Justice B.Prakash Rao, for his Lordship's kind perusal.

1 The Chairman & Managing Director, Transmission Corporation of A.P. Ltd., Vidyut Soudha, Khairatabad, Hyderabad
2 The Chairman & Managing Director, Central Power Distribution Company of A.P. Ltd., Singareni Bhavan, Red Hills, Hyderabad,
3 The Managing Director, Andhra Pradesh Gas Power Corporation Ltd., #201, 2nd Floor My Home Sarovar Plaza, Secretariat Road, Hyderabad-500 63,
4 The Chairman & Managing Director, Eastern Power Distribution Company of A.P. Ltd., 30-14-9, Sai Salthi Bhavan, Opp: Saraswati Park Daba Gardens, Visakhapatnam
5 The Chairman & Managing Director, Southern Power Distribution Company of A.P. Ltd., 19-3-13, Upstairs of Hero Honda Show Room, Renigunta Road, Tirupati-517 501

6 Southern Power Distribution Company of A.P. Ltd., 19-3-13 (M), Upstairs, Renigunta Road, Tirupati, rep. by its Chairman & Managing Director

7 The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

8 The Secretary, A.P.Advocates' Association Library, High Court buildings, Hyderabad.

9 8 LR copies.

10 Two CD copies.